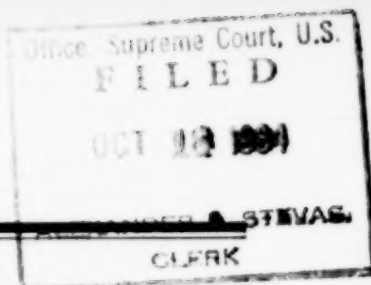


No. 84-325



**In the Supreme Court of the United States**

OCTOBER TERM, 1984

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METROPOLITAN LIFE INSURANCE COMPANY, APPELLANT

*v.*

COMMONWEALTH OF MASSACHUSETTS

---

ON APPEAL FROM THE SUPREME JUDICIAL COURT  
FOR THE COMMONWEALTH OF MASSACHUSETTS

---

REPLY BRIEF FOR APPELLANT

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### REPLY BRIEF FOR APPELLANT

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The motion to dismiss or affirm filed by the Commonwealth disregards statutory provisions, judicial decisions, and practical considerations that are central to ERISA preemption issues. In addition, it ignores the congressional choice to leave benefit selection to the private sector; misreads the holding in *Shaw v. Delta Air Lines*, 103 S. Ct. 2890 (1983); and wrongly asserts that appellants' arguments are contrary to the trial court record.

1. By assuming throughout its response that Section 47B is a law that "regulates insurance," the Commonwealth begs the very question to be decided.

The question presented in this case is whether Section 47B is a law that "regulates insurance" within the meaning of ERISA's insurance savings clause. The Commonwealth *assumes* an affirmative answer, for the simplistic reason that part of Section 47B affects the content of

health insurance policies. The Commonwealth's approach is erroneous and has already been rejected twice by the Supreme Judicial Court of Massachusetts. Moreover, the Commonwealth completely disregards several factors of undeniable relevance to the issue at hand and seeks to apply the savings clause in a vacuum.

First, the Commonwealth ignores the ERISA preemption clause, its legislative history, and the holdings of this Court regarding the breadth of the clause and the narrowness of its exceptions. These matters are simply not discussed in the Commonwealth's motion. As this Court has observed, Congress deliberately chose to enact an unusually broad preemption provision intended to reach all state laws that "relate to" employee benefit plans. *Shaw v. Delta Air Lines*, *supra*, 103 S. Ct. at 2899-2900, 2903 (1983); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981).<sup>1</sup> The Court has also held that the exceptions to ERISA preemption are "narrow", "specific", and "very limited". *Shaw v. Delta Air Lines*, *supra*, 103 S. Ct. at 2903. The Commonwealth not only disregards this holding but actually suggests that the insurance savings clause should be construed broadly (Motion 20).<sup>2</sup>

Second, the Commonwealth disregards the true scope and purpose of Section 47B. Having conceded that the

<sup>1</sup> See also *Hotel and Restaurant Employees and Bartenders International Union Local 54 v. Danzinger* [sic], 536 F. Supp. 317, 333 (D.N.J. 1982) ("The language used by Congress to establish the preemptive effect of ERISA is more comprehensive than Congress usually employs"), *rev'd on other grounds*, 709 F.2d 815, 830-831 (3d Cir. 1983) (expressly confirming the breadth of ERISA preemption), *vacated and remanded on other grounds*, 104 S. Ct. 3179 (1984); *Monsanto Co. v. Ford*, 534 F. Supp. 51, 53 (E.D. Mo. 1981) ("The broad scope of the language [in] § 1144 indicates a congressional intent to preempt the entire field of law involving employee benefit plans subject to ERISA").

<sup>2</sup> "Motion" refers to the Commonwealth's Motion to Dismiss or Affirm, filed in this Court on October 5, 1984.

portion of Section 47B applying directly to ERISA plans is preempted and cannot be enforced, the Commonwealth acts as if that portion of the statute does not exist and characterizes the remainder of Section 47B as a statute that "regulates insurance." As the language and history of Section 47B show, however, its purpose was to make mental health care widely available, not to regulate insurance. See General Court Joint Committee on Insurance, *Advances in Health Insurance in Massachusetts* (August 1974), summarized in J.S. App. 52a-53a. Whatever the severability of Section 47B may be as a matter of state law, the statute must be viewed as a whole to determine whether it is preempted by ERISA, a federal statute.

Third, the Commonwealth blithely disregards the practical consequences of its position. If state mandated benefit laws like Section 47B are held to be laws that regulate insurance within the meaning of ERISA, the states will be free to dictate the entire substantive content of insured ERISA plans, employers will be deprived of the opportunity to maintain uniform, insured multistate plans, and ERISA plans will be encouraged to turn to self-insurance as a way of avoiding proliferating state regulation. The Commonwealth does not deny that these results will occur, but it apparently believes they are irrelevant to the preemption issue presented here. In fact, the consequences listed above are critical. They demonstrate the inconsistencies between the Commonwealth's position and the regulatory scheme that Congress sought to establish in ERISA.<sup>3</sup>

<sup>3</sup> On two occasions, the Commonwealth refers to the McCarran-Ferguson Act in support of the proposition that "[i]nsurance regulation is generally reserved for the states" (Motion 2 n.1, 17). Appellants have no quarrel with this proposition, but it does not help answer the question presented in this case: Whether the ERISA savings clause permits complete state regulation of the contents of insured ERISA plans. Section 2(b) of the McCarran-Ferguson Act, 15 U.S.C. 1012(b), does not limit the scope of

By insisting on an overbroad, wooden interpretation of the savings clause that has twice been rejected by the court below, and by refusing to defend that court's reasoning in upholding Section 47B, the Commonwealth has highlighted the need for intervention by this Court. Only this Court can provide a definitive resolution that will fix the proper bounds for state regulatory efforts and avoid the need for further repetitive litigation in numerous jurisdictions.

**2. Congress left to the private sector the choice of benefits to be provided by ERISA plans.**

At several points in its motion to dismiss or affirm, the Commonwealth reflects a fundamental misunderstanding both of appellants' position and of Congress' intent with respect to the substantive content of ERISA plans. The Commonwealth accuses appellants of arguing that "Congress sought through ERISA to *mandate* uniformity in benefits \* \* \* of employee benefit plans" (Motion 18; emphasis added). The Commonwealth goes on to contend that "[b]y creating exceptions to ERISA preemption of state laws, Congress expressly provided for lack of uniformity in ERISA plans among the states" (Motion 12-13).

In fact, however, Congress neither mandated uniformity nor required lack of uniformity. It sought to provide an opportunity for private choice by *enabling* multistate employers to maintain uniform plans. As this Court said in *Shaw*, Congress sought to "minimize[] the need for interstate employers to administer their

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ERISA preemption. As the federal courts have held, to the extent that the McCarran-Ferguson Act would be applicable at all, ERISA falls within the clause in Section 2(b) of the Act that explicitly excepts any federal law that "specifically relates to the business of insurance \* \* \*." See, e.g., *Hewlett-Packard Co. v. Barnes*, 571 F.2d 502, 505 (9th Cir.), cert. denied, 439 U.S. 831 (1978). ERISA preemption questions therefore turn solely on the proper construction of ERISA, not the McCarran-Ferguson Act or any other federal statute.

plans differently in each State in which they have employees" (103 S. Ct. at 2904).

It does not follow, as the Commonwealth argues (Motion 13), that merely because ERISA does not itself mandate benefits, Congress was unconcerned with the substantive content of ERISA plans and encouraged lack of uniformity. Congress decided to leave the substantive content of ERISA plans to the private sector and thus to permit uniformity in multistate plans. This opportunity for private choice by plan participants and plan sponsors is precisely what this Court was referring to in *Shaw* when it said that "ERISA does not mandate that employers provide any particular benefits" (103 S. Ct. at 2897). Congress most certainly did not intend, by enacting the insurance savings clause, to allow 50 different states to prescribe 50 different sets of substantive benefits that must be provided by multistate insured ERISA plans.

A recent Sixth Circuit decision strongly supports this point. In *Moore v. Reynolds Metal Company Retirement Program For Salaried Employees*, No. 83-3458 (Aug. 10, 1984), the court of appeals stressed that "an employer has no affirmative duty to provide employees with a pension plan. In enacting ERISA, Congress continued its reliance on *voluntary* action by employers" (slip op. 3; emphasis in original, citation omitted). The court ruled that "courts have no authority to decide which benefits employers must confer upon their employees; these are decisions which are more appropriately influenced by forces in the marketplace and, when appropriate, by federal legislation" (*id.* at 4). See also *id.* at 5-6. The limitations recognized in *Moore* on the power of the federal courts to override private choice with respect to the benefits to be provided by ERISA plans are equally applicable to state legislatures. Congress did not intend to permit the states, in the guise of regulating insurance, to override the congressional decision to leave benefit selection to the private sector.

### 3. The Commonwealth misreads the decision in *Shaw*.

Appellee's treatment of this Court's decision in *Shaw* is erroneous and misleading. Twice, the Commonwealth misstates the holding in *Shaw* in a way that suggests the Court reached a result exactly the opposite of the actual decision. Appellee says that "in *Shaw*, the Court allowed the state to mandate benefits, even where it might result in a lack of uniformity in ERISA plan administration" (Motion 24-25). The Commonwealth further asserts that "the Court noted its approval of a statutory scheme that would indirectly dictate the contents of an ERISA plan and thereby detract from uniformity of multi-state benefit plans" (Motion 26). These summaries pervert *Shaw*'s holding, which was that states may *not* compel employers to include particular disability benefits in ERISA plans. In the Court's words, "the State may not require an employer to alter its ERISA plan" (103 S. Ct. at 2906).

Under Section 4(b)(3) of ERISA, 29 U.S.C. 1003(b)(3), an employee benefit plan maintained *solely* to comply with a state disability insurance law is, by definition, not an ERISA plan and not subject at all to the requirements of the federal statute. In *Shaw*, New York argued, on the basis of Section 4(b)(3), that a state can properly compel a multi-benefit ERISA plan to provide the disability benefits prescribed by state law. This Court disagreed. At most, the Court said, states may require employers to maintain separate plans solely for the purpose of complying with state disability insurance laws. If employers *choose* to comply with such requirements by including disability benefits in their ERISA plans (rather than in a separate plan), they are free to do so. But a state may not *require* employers to follow that course. States may not use Section 4(b)(3)'s exemption for disability plans to deprive the parties to an ERISA plan of their private right to determine the benefits to be included in that plan. Similarly, states cannot rely on Section 4(b)(3) to deny

a multistate employer the option of maintaining a uniform ERISA plan.

### 4. The factual findings of the trial court are not contrary to appellants' arguments.

Finally, the Commonwealth makes much of certain findings of the trial court and accuses appellant Metropolitan of misrepresenting the trial court's findings (Motion 5-7 and n.5). The accusation is unfounded, and the trial court's findings do not detract from appellants' arguments. Although Massachusetts charges appellant Metropolitan with omitting needed citations (Motion 7 n.5), appropriate record references are included in Metropolitan's jurisdictional statement, frequently on the very pages now cited by appellee as the basis of its complaint. See, e.g., 84-325 J.S. 18, 21 n.11, 23. Moreover, and more important, as this Court recognized in *Shaw* (103 S. Ct. at 2904 n.25), the propositions to which the Commonwealth objects are self-evident.

If each state is permitted to dictate a different set of benefits to be included in ERISA plans, it is obvious that maintaining uniform multistate plans will be more difficult. As this Court said in *Shaw* (103 S. Ct. at 2904 n.25), "[o]bligating the employer to satisfy the varied and perhaps conflicting requirements of particular state fair employment laws \* \* \* would make administration of a uniform nationwide plan more difficult."<sup>4</sup> For the same reason, state mandated benefit laws cannot fail to increase the costs of plan administration. The trial court itself expressly acknowledged that mandated benefit stat-

<sup>4</sup> Three witnesses testified at trial about the problems that mandated benefit statutes create for employers seeking to maintain uniform multistate plans. Their testimony was not challenged on cross-examination (A. 95-97, 172, 280-281). The Supreme Judicial Court's opinion on remand (J.S. App. 5a-6a) proceeds on the assumption that mandated benefit statutes *do* conflict with the congressional goal of enabling interstate employers to maintain uniform plans.

utes "do impose an administrative burden" (J.S. App. 54a).<sup>5</sup>

Likewise, there can be no question that mandated benefit statutes will either increase premium costs, or require the sacrifice of other benefits, or cause ERISA plans to become self-insured. Only a finite sum is available to fund employee benefit plans. New benefits cannot be added without costs. That is why the trial court expressly found that "§ 47B will result in additional premium cost" (J.S. App. 51a).<sup>6</sup> And that is why, if the Commonwealth's position is sustained, only plans that forgo the security provided by insurance will be able to avoid higher costs without sacrificing benefits.<sup>7</sup> It is just because these consequences are so clear and so inevitable that both the ERISA Industry Committee ("ERIC") and the Health Insurance Association of America ("HIAA") have submitted amicus briefs in this case, urging the Court to review the ERISA preemption question. See especially ERIC Br. 2-4; HIAA Br. 6-9.

<sup>5</sup> Three witnesses testified that mandated benefit statutes would increase administrative costs (A. 94-95, 177, 282). They were cross-examined concerning the extent, but not the fact, of such increases.

<sup>6</sup> Several witnesses testified, without contradiction, that mandated benefit statutes would increase premium costs (A. 177-179, 387, 538, 555-556). Similarly, two witnesses testified that employees might choose to trade other benefits for mandated benefits (A. 154, 548-549), and a third described how a particular unwanted trade-off was compelled (A. 86-87). This testimony was undisputed.

<sup>7</sup> Three witnesses testified that self-insurance is a possible response to mandated benefit statutes, and one specifically stated that his employer had considered becoming self-insured because of such statutes (A. 97, 179, 404). Again, this testimony was not contradicted.

## CONCLUSION

For all the foregoing reasons, as well as the reasons set forth in appellant's jurisdictional statement, probable jurisdiction should be noted.

Respectfully submitted,

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